

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

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In the Matter of )  
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Universal Service Contribution Methodology )  
Request for Waiver of Decision of the Universal )  
Service Administrator by )  
Comscape Telecommunications )  
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WC Docket No. 06-122

**ASCENT MEDIA GROUP, LLC  
COMMENTS IN SUPPORT OF  
COMSCAPE TELECOMMUNICATIONS  
REQUEST FOR WAIVER**

Pursuant to the Commission's Public Notice seeking comment,<sup>1</sup> Ascent Media Group, LLC ("Ascent") hereby submits these comments in support of Comscape Telecommunications' request for waiver of the 499-Q filing deadline. Comscape seeks relief that is similar to the relief Ascent seeks in its own petition for reconsideration of the Bureau's disposition of Ascent's appeal.<sup>2</sup> Both requests result from the same underlying inequity in USAC's application of the 499-Q filing deadline. As explained below, the current 499-Q revision policy is inequitable and inconsistent with commercially reasonable practices. Although the basic rule serves a legitimate purpose, experience shows that the rigidity of the current policy

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<sup>1</sup> Public Notice, Comment Sought on Comscape Telecommunications Request for Waiver of FCC Form 499-Q Revision Deadline, DA 09-2120 (rel. Sept. 28, 2009).

<sup>2</sup> See Public Notice, Comment Sought on Ascent Media Group Petition for Reconsideration of the Wireline Competition Bureau's Order Dismissing Ascent's Request for Review of a USAC Decision, DA 09-635 (rel. Mar. 19, 2009). Ascent seeks reconsideration of *In re Universal Service Contribution Methodology Requests for Waiver of Decisions of the Universal Service Administrator by Achieve Telecom Network of Massachusetts, LLC, et al.*, Order, DA 08-2695 (Dec. 15, 2008) (the "Order").

creates unreasonable hardship on USF contributors and that in cases of inadvertent mistakes enforcement of the policy is not necessary to administer the Universal Service Fund.

Comscape is a small telecommunications provider operating in the Raleigh-Durham area of North Carolina. In its waiver petition, Comscape stated that interstate revenues were “reported incorrectly by a staff member who is no longer with our company.”<sup>3</sup> Instead of reporting approximately \$800 in interstate revenue, the employee erroneously reported over \$107,000. This amount was in error, as Comscape explained that its call volume “is mostly local calls with a small volume in long distance interstate revenues.” The effect of the error, however, imposed an onerous burden on Comscape: instead of receiving no bill for what should have been a *de minimis* filing, Comscape was due to be billed over \$14,000 for the quarter.<sup>4</sup> Such an amount would create an undue burden on an entity the size of Comscape.

Ascent agrees that a waiver is appropriate in this circumstance. Thousands of filers submit quarterly and annual reports to the FCC. Although it is reasonable and necessary to establish a deadline for such filings in order to ensure the orderly operation of the Federal Universal Service Fund and to prevent abusive revisions, such policies do not have to be as rigid as USAC is applying them here. Comscape’s request illustrates that inadvertent errors are inevitable with a program as large as the FUSF. Indeed, Comscape’s request is but the latest in a line of extremely infrequent but nonetheless inevitable errors that will occur. When these errors occur, they have a severe impact on the contributor. As CompTel noted in commenting in

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<sup>3</sup> Letter from Ghanshyam C. Patel, President/CEO, Comscape Telecommunications, to FCC, July 31, 2009 (“Comscape Request”).

<sup>4</sup> Comscape attached an invoice showing \$4,669.18 in current USF charges resulting from the erroneous 499-Q. USAC invoices quarterly contributions in three equal monthly amounts, so this invoice represents \$14,007.54 in USF charges that would be billed in the quarter.

support of Ascent's petition for reconsideration, current application of the 499-Q revision deadline is inconsistent with common industry practice and harms USF contributors by denying them the time value of money lost pending a true up, thereby "forc[ing] carriers to make interest free loans to a government administered fund for up to a year."<sup>5</sup>

At the same time, the errors have a negligible effect on the FUSF, either individually or as a whole. The FUSF is a \$7 billion annual fund; errors of the magnitude before the Commission will not have any effect on the Fund. First, the impact of any 499-Q errors is temporary in nature. 499-Qs are estimates of revenues for the upcoming quarter. USAC conducts an annual true-up of estimated revenues through the 499-A. Thus, when a contributor makes an error in a 499-Q, the error will be corrected in the 499-A and USAC ultimately will owe a refund to the contributor of any amounts overpaid. Significantly, while the errors have no impact on USAC in the long run, they can have a significant and unduly burdensome impact on the contributor, as appears to be the case with Comscape (and as was the case with Ascent).

Even on a short-term basis, the impact of permitting additional revisions through a waiver process is negligible. USAC already accounts for significantly higher adjustments than would result from a reasonable waiver policy. According to USAC's 2008 Annual Report of Operations, USAC carries an "allowance for doubtful accounts" of \$279 *million*.<sup>6</sup> This is more

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<sup>5</sup> COMPTEL'S Comments in Support of the Petitions for Reconsideration of the Wireline Competition Bureau's Order Dismissing Requests for Review of USAC Decision, WC Docket 06-122, at 3-4 (filed April 20, 2009).

<sup>6</sup> 2008 Annual Report (amended April 2009), at 27. USAC's annual report is filed in WC Docket 96-45 and also is available on the USAC website at [http://www.usac.org/\\_res/documents/about/pdf/usac-annual-report-2008.pdf](http://www.usac.org/_res/documents/about/pdf/usac-annual-report-2008.pdf).

than enough to ensure that reasonable adjustments can be made (when approved by the Commission via a waiver) while not threatening the operation of the FUSF.<sup>7</sup>

Ascent submits that now is an appropriate time for the Commission to reconsider its approach to the 499-Q deadline. The Bureau has authority to remedy the inequity created by such situations through a limited and reasonable waiver policy. The Commission (and by delegation, the Bureau) may waive a rule for “good cause shown.”<sup>8</sup> The Commission “generally finds good cause to grant a waiver of its rules where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy objective of the rule in question.”<sup>9</sup> The Bureau has further noted that “the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.”<sup>10</sup> These conditions are satisfied here.

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<sup>7</sup> In any event, if the Commission is concerned with the impact of waivers on the Fund, the Commission may include a factor in its waiver policy which weighs the balance of harm to the contributor with the balance of harm to the Fund.

<sup>8</sup> 47 C.F.R. §1.3.

<sup>9</sup> *In re Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Phase II Compliance with Deadlines for Tier III Carriers*, 20 FCC Rcd 7709, ¶9 (2005).

<sup>10</sup> *See In re Federal-State Joint Board on Universal Service; Universal Service Contribution Methodology; Aventure Communications Technology, LLC, Form 499 Filer ID: 825749 Request for Review of USAC Rejection Letter and Request for Waiver of USAC 45 Day Revision Deadline*, 23 FCC Rcd 10096, n.10 (2008) citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C.Cir. 1969).

Following a reasonable waiver policy, the Bureau should waive the 499-Q revision deadline in this instance (and in Ascent's situation) and instruct USAC to re-compute USF contributions according to the revised form 499-Q.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Steven A. Augustino', is positioned above a horizontal line.

Steven A. Augustino  
Denise N. Smith  
Kelley Drye & Warren LLP  
3050 K Street, NW  
Suite 400  
Washington, D.C. 20007-5108

*Counsel to Ascent Media Group,  
LLC*

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